

# CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

TELEPHONE: (212) 428-1000  
FACSIMILE: (212) 428-3700

2 HONEY LANE, CHEAPSIDE  
LONDON EC2V 8BT, ENGLAND  
TELEPHONE: 1-606-1421  
FACSIMILE: 1-606-1425  
1-606-0346

ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
BENJAMIN F. CRANE  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A.O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
HERBERT L. CAMP  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS

MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
JOSEPH A. MULLINS  
MAX R. SHULMAN  
STUART W. GOLD  
JOHN W. WHITE  
JOHN E. BEERBOWER  
EVAN R. CHESLER  
PATRICIA GEOGHEGAN  
D. COLLIER KIRKHAM  
MICHAEL L. SCHLER  
DANIEL P. CUNNINGHAM  
KRIS F. HEINZELMAN  
B. ROBBINS KIESSLER  
ROGER D. TURNER  
PHILIP A. GELSTON  
RORY O. MILLSON  
NEIL P. WESTREICH  
FRANCIS P. BARRON  
RICHARD W. CLARY  
WILLIAM P. ROOPE  
JAMES D. COOPER  
STEPHEN L. GORDON  
ROBERT A. KINDLER  
DANIEL L. MOSLEY  
GREGORY M. SHAW  
PETER S. WILSON  
JAMES C. VARDELL, III  
ROBERT H. BARON  
KEVIN J. GREHAN  
W. CLAYTON JOHNSON  
STEPHEN S. MADSEN

16443  
RECORDATION NO. 16443  
FILED 1423  
WRITERS DIRECT DIAL NUMBER

RECORDATION NO. 16446  
FILED 1423

JUL 28 1989 -9 05 AM

INTERSTATE COMMERCE COMMISSION

JUL 28 1989 -9 05 AM

INTERSTATE COMMERCE COMMISSION  
009A001

RECORDATION NO. 16446  
FILED 1423

JUL 28 1989 -9 05 AM

INTERSTATE COMMERCE COMMISSION

July 27, 1989

JUL 28 8 51 AM '89

Grand Trunk Western Railroad Company

Lease Financing Dated as of July 15, 1989

9.4% Series A Conditional Sale Indebtedness due July 2, 2004  
9.4% Series B Conditional Sale Indebtedness due July 2, 1999

Dear Ms. McGee:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Grand Trunk Western Railroad Company, for filing and recordation counterparts of the following documents:

1. Rebuilding and Conditional Sale Agreement dated as of July 15, 1989, among Mercantile-Safe Deposit and Trust Company, as Agent, Grand Trunk Western Railroad Company, as Builder, and First Security Bank of Utah, N.A., as Trustee.

2. (a) Lease of Railroad Equipment dated as of July 15, 1989, between Grand Trunk Western Railroad Company, as Lessee, and First Security Bank of Utah, N.A., as Trustee; and

(b) Assignment of Lease and Agreement dated as of July 15, 1989, between First Security Bank of Utah, N.A., as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

*Completed  
Nathan Greenberg*

The names and addresses of the parties to the  
aforementioned agreements are as follows:

1. Agent-Vendor:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

2. Trustee-Lessor:

First Security Bank of Utah, N.A.,  
79 South Main Street  
Salt Lake City, Utah 84111

3. Lessee-Builder-Seller:

Grand Trunk Western Railroad Company  
1333 Brewery Park Blvd.  
Detroit, Michigan 48207

Please file and record the documents referred to  
in this letter and index them under the names of the  
Agent-Vendor, the Trustee-Lessor and the  
Lessee-Builder-Seller.

The reconstructed railroad equipment covered by  
the Rebuilding and Conditional Sale Agreement and the Lease  
are listed in Exhibit A attached hereto. The reconstructed  
railroad equipment bears the legend "OWNERSHIP SUBJECT TO A  
SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE  
COMMISSION."

Enclosed is our check for \$26 for the required  
recordation fee. Please accept for recordation one counter-  
part of each of the enclosed agreements, stamp the remaining

counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

*Laurance V. Goodrich/kws*

Laurance V. Goodrich  
as Agent for  
Grand Trunk Western  
Railroad Company

Noreta R. McGee, Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

encls.

16446

RECORDATION NO. FILED 1425

JUL 28 1989 -9 05 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 6442-005]

LEASE OF RAILROAD EQUIPMENT

dated as of July 15, 1989

Between

GRAND TRUNK WESTERN RAILROAD COMPANY,  
as Lessee,

and

FIRST SECURITY BANK OF UTAH, N.A.,  
as Lessor.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as Agent for certain institutional investors. The original of this Lease is held by said Agent.

## LEASE OF RAILROAD EQUIPMENT

## TABLE OF CONTENTS

	<u>Page</u>
PARTIES .....	L-1
PREAMBLES .....	L-1
SECTION 1.	
Delivery and Acceptance of Units .....	L-1
SECTION 2.	
Rental .....	L-2
SECTION 3.	
Term of Lease .....	L-4
SECTION 4.	
Identification Marks .....	L-5
SECTION 5.	
Impositions .....	L-6
SECTION 6.	
Maintenance; Payment for Casualty	
Occurrences; Insurance .....	L-7
SECTION 7.	
Annual Reports .....	L-10
SECTION 8.	
Disclaimer of Warranties; Compliance	
with Laws and Rules; Indemnification .....	L-11
SECTION 9.	
Default .....	L-13
SECTION 10.	
Return of Units upon Default .....	L-17
SECTION 11.	
Assignment; Possession and Use .....	L-19
SECTION 12.	
Renewal Option; Purchase Option .....	L-21
SECTION 13.	
Return of Units upon Expiration of Term .....	L-23
SECTION 14.	
Recording; Expenses .....	L-24
SECTION 15.	
Interest on Overdue Obligations and Rentals ...	L-24
SECTION 16. Notices .....	L-25

	<u>Page</u>
SECTION 17. Effect and Modification of Lease .....	L-25
SECTION 18. Definitions .....	L-25
SECTION 19.	
Execution .....	L-26
SECTION 20. Immunities .....	L-26
SECTION 21.	
Law Governing; Severability .....	L-26
TESTIMONIUM .....	L-27
SIGNATURES .....	L-27
SCHEDULE A--Equipment List .....	L-29
SCHEDULE B--Basic Lease Rates .....	L-30
SCHEDULE C--Casualty Value Schedule .....	L-31

LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1989, between GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan and Indiana corporation (the "Lessee") and FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Trustee (the "Lessor").

The Lessee and the Lessor are entering into a Rebuilding and Conditional Sale Agreement dated as of the date hereof (the "RCSA") with MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (said bank as so acting, being hereinafter, together with its successors and assigns, called the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessor, the Lessee, Canadian Imperial Bank of Commerce (New York) (the "Owner"), Grand Trunk Corporation (the "Guarantor") and the State of Wisconsin Investment Board (together with its successors and assigns, "Investors"), wherein the Vendor has agreed to transfer to the Lessor its security title to the railroad equipment described in Schedule A hereto (the "Equipment") after it has been rebuilt (pursuant to the terms of the RCSA).

The Lessee desires to lease all the units of the Equipment as are delivered, accepted and settled for under the RCSA (the "Units"). The Lessor will assign certain rights in this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent thereto pursuant to the Consent and Agreement attached to the Lease Assignment (the "Consent").

In consideration of the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor under the RCSA:

SECTION 1. Delivery and Acceptance of Units.

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the RCSA. Each delivery of a Unit to the Lessor under the RCSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the RCSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit

is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the RCSA and itself hereunder whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee will promptly execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 2 of the RCSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 4 hereof, subject to the limitation that the aggregate Purchase Price of B-1 Units shall be less than two-thirds of the aggregate Purchase Price of Units accepted under this Lease on or prior to July 31, 1989. The Units designated Series A Equipment in the CSA are herein called "Series A Units" and the Units designated Series B Equipment in the CSA are herein called "Series B Units". Series B Units accepted hereunder on or prior to October 31, 1989, are designated "B1 Units" and accepted after October 31, 1989, but prior to December 31, 1989, are designated "B2 Units".

SECTION 2. Rental. The Lessee agrees to pay to the Lessor, as rental for each Series A Unit subject to this Lease, 30 consecutive semiannual payments in arrears as shown on Schedule B hereto on January 2 and July 2 of each year commencing July 2, 1990, and the Lessee agrees to pay to the Lessor, as rental for each Series B Unit, subject to this Lease, 20 consecutive semiannual payments in arrears as shown on Schedule B hereto on January 2 and July 2 of each year commencing July 2, 1990. The semiannual rental payments shall be the percentage of the Purchase Price of each Unit then subject to this Lease set forth in applicable column of Schedule B hereto opposite the appropriate semiannual rental payment date. The Lessee also agrees to pay the Lessor, as additional rentals, amounts equal to (i) any Investment Deficiency payable pursuant to the first paragraph of Section 10 of the Participation Agreement and (ii) any amounts payable pursuant to clauses (a) and (b) of the fourth paragraph of said Section 10, in each case on the dates such amounts are payable by the Lessor to the Agent. The foregoing rental rates and the Casualty Value percentages set forth in Schedule C hereto are subject to adjustment as provided in the Indemnity Agreement (as defined in the Participation Agreement) and in Section 17 of the Participation Agreement. Notwithstanding the foregoing, except for the Lessor's obligation to pay interest on the CSA Indebtedness on January 2, 1990, the rentals and Casualty Values will never be less than the amounts required to enable the Lessor to



satisfy its obligations to pay the CSA Indebtedness and the interest thereon regardless of any limitation of liability set forth in the RCSA.

If and to the extent that (a) the Vendor shall not, pursuant to the first paragraph of Section 15 of the Participation Agreement, receive the funds due thereunder from the Owner on January 2, 1990, the Lessee agrees to pay to the Lessor as additional rental for each Unit subject to this Lease, on January 2, 1990, an amount equal to the amount payable by the Owner pursuant to the first paragraph of said Section 15 or (b) the Owner does not pay the costs and expenses provided for in Section 12 of the Participation Agreement when due and payable and any claim is made therefore against the Vendor or the Investors, the Lessee agrees to pay the same; and the Lessee shall be entitled to an offset against subsequent rental payments due hereunder during the original term and any extended term of this Lease (to the extent such payments are not required to discharge the principal and interest on the CSA Indebtedness) of an amount equal to any amounts so paid by the Lessee plus interest thereon from the date of payment by the Lessee to the date of offset at the rate of 10.4% per annum.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Detroit, Michigan, Salt Lake City, Utah, New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the RCSA, or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the Units or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the taking or

requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. All payments under the Lease shall be made by bank wire transfer of immediately available funds at, and not later than 11:00 a.m. local time, in the city where such payments are due.

SECTION 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9 and 12 hereof, shall terminate on January 2, 2005 in the case of the Series A Units, and on January 2, 2000, in the case of the Series B Units; provided, however, that all the obligations of the Lessee, except for the payment of rent and the furnishing of annual reports, shall continue until surrender of the Units in accordance with Section 13 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the RCSA. If an event of default should occur under the RCSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be

entitled to the rights of possession, use and assignment provided under Section 11 hereof.

SECTION 4. Identification Marks. The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the RCSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed by the Lessee in all public offices where this Lease and the RCSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and that no filing, recording, depositing or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

SECTION 5. Impositions. All payments to be made by the Lessee hereunder (including all payments to be made under this Section 5) will on an after tax basis be free of expense to the Lessor, the Vendor, the Investors and their respective successors, assigns, agents and servants ("Indemnified Persons") for collection or other charges and will be free of expense to any Indemnified Person with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax and, to the extent that any Indemnified Person receives credit therefor against its United States Federal income tax liability, any foreign income tax payable by such Indemnified Person in consequence of the receipt of payments provided herein and other than the aggregate of all state and city income taxes and franchise taxes measured by net income except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, documentary stamp taxes, or governmental fees or charges and any charges, fines or penalties in connection therewith ("impositions") now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the RCSA, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnified Person solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting (and provided a reasonable basis exists for the initiation and continuation of such contest, and further provided that no appeal of an adverse determination of such a contest shall be permitted to the Supreme Court of the United States) in good faith and by appropriate legal proceedings such impositions, appropriate reserves have been made in respect thereof and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the RCSA. If any impositions shall have been charged or levied against any Indemnified Person directly and paid by such Indemnified Person, the Lessee shall reimburse such Indemnified Person on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse such

Indemnified Person for any impositions so paid unless such Indemnified Person shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such Indemnified Person reasonably acceptable to the Lessee) or unless the Lessee shall have approved the payment thereof.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 5 of the RCSA not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts, including the reasonable costs of the opinion of counsel described in the immediately preceding sentence (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with regard to impositions are required to be made on the basis of individual Units or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be reasonably satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be reasonably satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

The parties hereto acknowledge that the Units become a part of the mass of property used by the Lessee in its operations as a common carrier by rail. Consequently, the parties agree that the Lessee shall include the Units in the ad valorem tax returns to be filed by the Lessee in the applicable states or localities and that the Vendee shall not include the Units in any ad valorem tax returns filed by it in such states or localities unless such inclusion is required by law.

SECTION 6. Maintenance; Payment for Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which

is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, according to the Lessee's standards for similar units owned or leased by the Lessee, in compliance with all applicable regulatory requirements and in condition required for interchange.

In the event that any Unit shall be or become worn out, lost, stolen, totally destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for the lesser of a period of 90 consecutive days or a period which shall exceed the then remaining term of this Lease (each such occurrence being hereinafter called a "Casualty Occurrence") prior to the return of such Unit in the manner set forth in Section 13 hereof, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all payments provided for in this Lease in respect of such Unit until the Casualty Payment Date (as hereinafter defined) listed in Schedule C hereto next succeeding such notice. On January 2, 1990, or the next rental payment date, as the case may be ("Casualty Payment Date"), the Lessee shall pay to the Lessor the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule C hereto, plus the rental payment or payments in respect of such Unit then due and payable in arrears. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deductions of any cost or expense incurred in disposing of such Unit to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence at the end of the term of this Lease or after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit set forth in Schedule C hereto as of the rental payment date immediately preceding such Casualty Occurrence. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering such Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is, and with all faults" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance in respect of the Units at the time subject hereto and the use and operation thereof, including, without limitation, property insurance and public liability insurance, in such amounts and for such risks and with such insurance companies as are at least comparable to industry standards for Class I railroads, it being understood that the industry standard for Class I railroads at present allows for self-insurance for Casualty Occurrences. The Lessee hereby assigns and transfers to the Lessor and the Vendor, as their interests may appear, all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to

the extent such proceeds relate to the Units or the use and operation thereof as aforesaid. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional insureds or loss payees, as their respective interests may appear. On or prior to the First Delivery Date under the Participation Agreement and thereafter not less than 15 days prior to the expiration dates of the expiring policies, the Lessee shall deliver to the Lessor and the Vendor evidence of the insurance required to be maintained pursuant to this Section 6.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Vendor, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Vendor for all expenditures made by the Lessor or the Vendor for such insurance, together with interest thereon computed at the rate set forth in Section 15 in respect of overdue rentals from the date of the Vendor's or the Lessor's payment until reimbursed by the Lessee.

If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, if no Event of Default exists and no event has occurred which with the lapse of time or the giving of notice would be an Event of Default and subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments (up to the amount of the Casualty Value paid) to the Lessee. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor and the Vendor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

SECTION 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year 1990, the Lessee will cause to be furnished to the Lessor and the Vendor (at the addresses shown in Section 16 hereof) an accurate statement, as of the preceding December 31, showing the amount, description and numbers of the Units (a) then leased hereunder and/or covered by the RCSA, (b) that have suffered a Casualty Occurrence during the



preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced. The Lessor and the Vendor shall have the right at their sole cost, risk and expense, by their authorized representatives, to inspect the Units and the Lessee's records with respect thereto (including those relating to any use of the Units outside the United States) at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

SECTION 8. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE, OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof and the return of all Units as provided in Section 10 or 13 hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor, respectively, under this Lease or the RCSA. So long as no Event of Default shall have occurred and be continuing the Lessee, at its own cost and expense, may furnish additions, modifications and improvements to any Unit during the term of this Lease provided that such additions, modifications and improvements (a) are readily removable without causing material damage to such Unit and (b) do not diminish its utility or value. The additions, modifications and improvements made by the Lessee under the first sentence of this paragraph shall be owned by the Lessor, and the additions, modifications and improvements made by the Lessee under the second sentence of this paragraph shall (unless any such addition, modification or improvement is a replacement of or substitution for, any part originally incorporated or installed in or attached to a Unit or any part in replacement of or substitution for any such original part or unless such addition, modification or improvement is not removed by the Lessee at the time of delivery of possession by the Lessee pursuant to Section 10 or 13 hereof) be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless each Indemnified Person from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to,

counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (i) the entering into or the performance of the RCSA, the Participation Agreement, or this Lease, or any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby, (ii) the ownership of any Hulk or any Unit, (iii) the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any Hulk or any Unit, (iv) any accident in connection with the operation, use, condition, reconstruction, possession, storage or return of any Hulk or any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease, including without limitation any claim based upon the doctrines of product liability or strict or absolute liability in tort or by statute imposed, or (v) the transfer of security title to the Equipment by the Vendor pursuant to the RCSA. Each Indemnified Person as a condition of being indemnified hereunder, shall give the Lessee, promptly upon obtaining knowledge thereof, written notice of any claim or liability to be indemnified against hereunder in respect of such Indemnified Person. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the delivery of the Equipment or the full payment and performance of all obligations under this Lease or the expiration or termination of the term of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal of or interest on the CSA Indebtedness. Nothing in this Section 8 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the RCSA or a guarantee of the residual value of any Unit.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports of which the Lessee is aware (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

SECTION 9. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

A. default shall be made in the payment of any amount provided for in Section 2, 6 or 12 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, the RCSA or the Consent and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee (and the Lessor, if such notice is given by the Vendor) specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee or the Guarantor under this Lease, the Participation Agreement, the RCSA and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees and, in respect to the Lessee, otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; provided, however, if such petition was not filed by the Lessee or the Guarantor, as the case may be, the default hereinabove specified in this subdivision D shall not become an event of default until 60 days after such petition has been filed; or

E. any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee or the Guarantor

hereunder or under the Participation Agreement, the RCSA or the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers; provided, however, if such proceedings were not commenced by the Lessee or the Guarantor, as the case may be, the default hereinabove specified in this subdivision E shall not become an event of default until 60 days after such proceedings shall have been commenced; or

F. an event of default set forth in Article 14 of the RCSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under the Participation Agreement, the RCSA or the Consent and shall not have been cured as provided for therein; or

G. any of the Lessee's representations or warranties made herein, in the Participation Agreement or the RCSA or any statement or certificate at any time given in writing pursuant hereto or in connection herewith (other than in the Tax Indemnity Agreement) shall be breached or found to be false or misleading in any material respect;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit (as is, where is) at such time; provided, however, that in the event the Lessor shall have sold any Unit, in a commercially reasonable manner, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the

occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the reasonable judgment of the Lessor appears to affect the Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its reasonable discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within ten (10) days of notice thereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 10. Return of Units upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and shall have removed therefrom all additions, modifications and improvements which the Lessee owns pursuant to

Section 8 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units of the Equipment have been interchanged to return the units so interchanged) place such Units upon such storage tracks of the Lessee as the Lessee reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insuring and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in case any such representative shall fail to abide by the Lessee's reasonable safety and security regulations and procedures, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

The Lessee hereby waives any and all claims against the Vendor or the Lessor and their agents for damages of whatever nature in connection with any retaking of the Units in any reasonable manner.



All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to 0.030085% of the Purchase Price of such Unit if it is a Series A Unit or 0.038480% of the Purchase Price of such Unit if it is a Series B Unit. Nothing contemplated by this paragraph, including the payment by the Lessee of any amounts pursuant hereto shall be deemed to relieve the Lessee of its obligation to assemble, deliver and store the Units or affect the Lessor's rights and remedies with respect to such obligation.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The rights of the Lessor hereunder (including the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Vendor as assignee under the Assignment in the manner and to the extent therein provided. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof; and any such assignment or transfer without said consent shall be void. The Lessee, at its own expense, will promptly discharge or cause to be duly discharged any and all sums claimed by any party which if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance which the Lessor is obligated to discharge pursuant to Section 15 of the Participation

Agreement), upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates or to any railroad company incorporated in the United States of America or any state thereof or the District of Columbia, but only upon and subject to all the terms and conditions of this Lease and the RCSA and for a term not exceeding the applicable term of this Lease; provided, however, that any sublease or subleases of any Unit to the same non-affiliated railroad company shall not exceed in the aggregate a period of three years. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph shall be subject and subordinate to the rights and remedies of the Vendor under the RCSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default thereunder or an Event of Default hereunder.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the

obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

SECTION 12. Renewal Option; Purchase Option.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect, by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease as to any Series of Units (or, in the event the Lessee extends the term of this Lease as to such Series for an additional one-year term, not less than 180 days prior to the end of that extended term) to extend the term of this Lease in respect of all, but not fewer than all, the Units of such Series then covered by this Lease for an additional one-year period commencing on the scheduled expiration of the original term or the first extended term of this Lease, as the case may be, at a semiannual rental payable in arrears in semiannual payments, in an amount equal to the Fair Market Rental (as hereinafter defined). Such rental payments will be made on January 2 and July 2 in each year of the applicable extended term.

"Fair Market Rental" shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, (i) it shall be assumed that the Units are in the condition and repair in which they are required to be maintained pursuant to this Lease and that they are free and clear of all liens, claims and encumbrances, (ii) the value of the additions, modifications and improvements as to which Lessee retains title pursuant to Section 8 shall not be included and (iii) costs of removal from the location of current use shall not be a deduction from such value. If, within two months following receipt of the notice required by the preceding paragraph, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the relevant Units, such rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser as hereinafter defined. The term "Appraiser" shall mean such independent Appraiser as Lessor may select with the approval of Lessee, or,

failing such approved selection, an independent appraiser selected by two independent appraisers, one of whom shall be selected by Lessor and one by Lessee; and if no such Appraiser is selected within 15 days, either party may apply to have the appointment made by the American Arbitration Association and both parties shall be bound by such appointment. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee and the Lessee shall then either exercise or not exercise the option. The expenses and fees of the Appraiser shall be split equally between the Lessee and the Lessor if the Lessee exercises its option; and otherwise, such fees and expenses shall be for the Lessee's account.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, at the end of the original term of this Lease as to each Series of Units, the Lessee may elect to purchase all but not less than all the Units of such series then subject to this Lease at the lesser of the then "Fair Market Value" of such Units or an amount equal to 35% of the Purchase Price of such Units in the case of Series A Units, and 32.5% of the Purchase Price of such Units in the case of Series B Units, by giving written notice to the Lessor not less than 180 days prior to the expiration of such term.

Provided that this Lease has not been earlier terminated and the Lessee is not in default thereunder, at the end of a renewal period as to a Series of Units as provided for in the first paragraph of this Section 12, the Lessee may elect to purchase all but not less than all the Units of such series then subject to this Lease at the then "Fair Market Value" of such Units by giving written notice to the Lessor not less than 180 days prior to the expiration of such term.

"Fair Market Value" shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing purchaser (other than a lessee currently in possession) and an informed and willing seller under no compulsion to sell and, in such determination, the same assumptions applicable to the determination of Fair Market Rental, as set forth in the second paragraph of this Section 12, shall be applied. If, within 30 days following receipt of the notice required by the preceding paragraph,

the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such Fair Market Value shall be determined in accordance with the foregoing definition by the appraisal procedure set forth in the second paragraph of this Section 12. The Appraiser shall be instructed to make the determination of Fair Market Value within a period of 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and the Lessee. The Lessee shall then either exercise or not exercise its option. The fees and expenses of the Appraiser shall be split equally between the Lessor and the Lessee if the Lessee exercises its option; and otherwise, such fees and expenses shall be for the Lessee's account.

SECTION 13. Return of Units upon Expiration of Term. After the expiration of the original or any extended term of this Lease, the Lessee will have 30 days to marshal the Units (without being required to make any payment to Lessor in respect of the Units) and the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Units on such tracks for a period not exceeding 30 days, and transport such Units at any time within such 30-day period, to one or more connecting carriers for shipment, all as directed by the Lessor, the movement, storage and insurance of such Units to be at the expense and risk of the Lessee. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction, and (iii) have removed therefrom by the Lessee without cost or expense to the Lessor all additions, modifications and improvements which the Lessee owns pursuant to Section 8 hereof. The

assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after the end of the term of this Lease, or any extended term, then the Lessee shall pay the Lessor for each day thereafter an amount equal to 0.030085% of the Purchase Price of such Unit if it is a Series A Unit or 0.038480% of the Purchase Price of such Unit if it is a Series B Unit.

SECTION 14. Recording; Expenses. The Lessee, at its own expense, will cause this Lease, the RCSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, recording and depositing and refiling, rerecording and redepositing required of the Lessor under the RCSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their reasonable satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the assignment hereof to the Vendor, or the RCSA; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the Assignment and the RCSA shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and the provision will have been made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

SECTION 15. Interest on Overdue Obligations and Rentals. Anything to the contrary herein contained

notwithstanding, any nonpayment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to 10.4% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

SECTION 16. Notices. Any notice required or permitted to be given by any party hereto to any other party or parties shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) if to the Lessor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Corporate Trust Department;

(b) if to the Lessee, at 1333 Brewery Park Boulevard, Detroit, Michigan 48207, Attention of: Treasurer;

(c) if to the Vendor, at P.O. Box 2258 (Two Hopkins Plaza, if by hand), Baltimore, Maryland 21203, Attention of: Corporate Trust Department;

or addressed to any such party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 17. Effect and Modification of Lease. Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

SECTION 18. Definitions. If and so long as this Lease is assigned to the Vendor (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall also apply and refer to the Vendor and any successors thereto unless the context shall otherwise require and except that the Vendor shall not be subject to any liabilities or obligations under this Lease;

and the fact that the Vendor is specifically named in certain provisions shall not be construed to mean that the Vendor (and any successors thereto) is not entitled to the benefits of other provisions where only the Lessor is named or where only the Vendor, as the case may be, is named.

SECTION 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original counterpart and all other counterparts shall be deemed duplicates thereof. It is not necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Lease shall become effective. Although this Lease is dated as of the date first set forth above for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 20. Immunities. Each and all of the representations, warranties, covenants and agreements herein made on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and (except as aforesaid) this agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution on account of any representation, warranty, covenant or agreement herein of the Trustee (except in the case of gross negligence or willful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor making claim hereunder may look to said Trust Estate for satisfaction of the same.

SECTION 21. Law Governing; Severability. The terms of this Lease and all rights and obligations



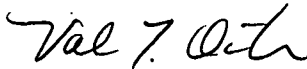
hereunder shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. § 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

FIRST SECURITY BANK OF UTAH,  
N.A., not in its individual  
capacity but solely as  
Trustee,

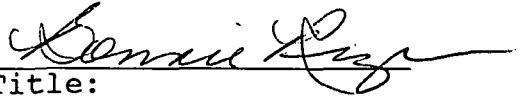
by

  
Title: ASSISTANT VICE PRESIDENT  
Name: Val T. Oton

Executed on July 25, 1989.

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

by



Title:

Name:

Executed on July 24 , 1989.

# SCHEDULE A TO LEASE

<u>Group</u>	<u>Quantity</u>	<u>AAR Mechanical Description</u>	<u>Lessee's Road Numbers (Inclusive)</u>
A	147	60' 100-ton box cars	GTW 375600- 375749
A	22	60' 100-ton boxcars	GTW 105564- 105585
B	130	86' 6" 100- ton high-cube box cars	GTW 127000- 127134

---

\* Units subject to this Lease will include only those delivered, accepted and settled for under the RCSA on or before December 31, 1989 and will bear the Road Numbers listed above. Upon completion of all deliveries, if necessary, this Schedule A will be appropriately amended to delete the Equipment listed above which has not become subject to this Lease.

# SCHEDULE B TO LEASE

## Basic Lease Rates

<u>Date</u>	<u>Group A Percentage of Purchase Price</u>	<u>Group B-1 Percentage of Purchase Price</u>	<u>Group B-2 Percentage of Purchase Price</u>
July 2, 1990	3.760000	3.760000	5.741108
Jan. 2, 1991	6.258364	8.720614	6.973459
July 2, 1991	3.668847	3.675313	4.248012
Jan. 2, 1992	6.349519	8.805302	8.466554
July 2, 1992	3.542855	3.474664	4.049741
Jan. 2, 1993	6.475511	9.005949	8.664826
July 2, 1993	3.405020	3.228767	3.832832
Jan. 2, 1994	6.613345	9.251847	8.881735
July 2, 1994	3.254229	2.945682	3.595533
Jan. 2, 1995	6.764136	9.534932	9.119033
July 2, 1995	3.089264	2.635988	3.335930
Jan. 2, 1996	6.929101	12.617480	12.203470
July 2, 1996	2.908791	2.171606	2.919156
Jan. 2, 1997	7.109575	13.081861	12.620244
July 2, 1997	2.711354	1.688935	2.035097
Jan. 2, 1998	8.420121	13.564532	13.504304
July 2, 1998	2.482010	1.130782	1.305227
Jan. 2, 1999	9.762575	14.122687	14.234173
July 2, 1999	2.224513	11.587436	15.539402
Jan. 2, 2000	10.020071	3.666031	0.000000
July 2, 2000	1.956122		
Jan. 2, 2001	10.288462		
July 2, 2001	1.732048		
Jan. 2, 2002	10.512537		
July 2, 2002	1.378279		
Jan. 2, 2003	10.866307		
July 2, 2003	0.932341		
Jan. 2, 2004	11.312244		
July 2, 2004	12.244584		
Jan. 2, 2005	0.000000		
	<u>166.972125</u>	<u>138.670408</u>	<u>141.269836</u>

\* As defined in Article 3 of the RCSA.

SCHEDULE C TO LEASE

Casualty Value Percentages Schedule

<u>Casualty Payment Date</u>	<u>Group A Percentage*</u>	<u>Group B-1 Percentage*</u>	<u>Group B-2 Percentage*</u>
1/2/90	107.209886	104.286519	102.952699
7/2/90	108.213452	105.632530	102.682805
1/2/91	106.876842	101.377357	100.619505
7/2/91	107.501613	102.028036	101.302422
1/2/92	105.591657	97.133323	97.271297
7/2/92	106.045976	97.463098	97.521533
1/2/93	103.644834	92.010425	92.837219
7/2/93	103.978907	92.012472	92.793940
1/2/94	101.144649	86.115694	87.499216
7/2/94	101.386629	86.201326	87.265459
1/2/95	98.109520	79.669918	81.383792
7/2/95	98.250854	79.725304	84.045570
1/2/96	94.501183	69.807434	71.809704
7/2/96	94.546716	69.945248	71.437228
1/2/97	90.369065	59.250042	61.357699
7/2/97	90.413513	59.590823	61.469605
1/2/98	84.770835	48.212625	50.201810
7/2/98	84.845579	48.936636	50.778062
1/2/99	77.672789	36.862278	38.601276
7/2/99	77.769026	27.055222	24.843173
1/2/00	70.138137	24.680000	25.980000
7/2/00	70.316090		
1/2/01	62.242806		
7/2/01	62.434812		
1/2/02	53.966464		
7/2/02	54.385475		
1/2/03	45.473665		
7/2/03	46.271393		
1/2/04	36.876967		
7/2/04	26.351030		
1/2/05	27.500000		

---

\*Expressed as a percentage of Purchase Price.

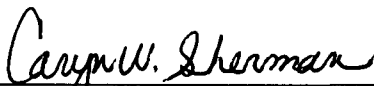
1.3

CERTIFICATE OF TRUE COPY

STATE OF NEW YORK )  
                              ) ss:  
COUNTY OF NEW YORK)

I, Caryn W. Sherman, do hereby certify that I have compared the attached copies of the attached documents with an executed original counterpart thereof and find the said attached copies to be in all respects true, correct and complete copies of the aforesaid executed original counterpart.

IN WITNESS WHEREOF, the undersigned has hereunto affixed his signature this 27th day of July, 1989.

  
\_\_\_\_\_  
Caryn W. Sherman

Subscribed and sworn to  
before me this 27th day  
of July, 1989.

  
\_\_\_\_\_  
Notary Public

My Commission expires:

**ARTHUR WELWARDT**  
Notary Public, State of New York  
No. 41-4834412  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires July 31, 1991